

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SEASONS PIZZA FRANCHISOR, INC.

1007 Church Road
Bear, Delaware 19702

Plaintiff

v.

FOUR SEASONS PIZZA, LLC

2467 S. State Street
Dover, DE 19901-6304

Serve On:

2467 S. State Street
Dover, DE 19901-6304

Defendant

C.A. No.:

JURY TRIAL DEMANDED

* * * * *

COMPLAINT

Plaintiff, Seasons Pizza Franchisor, Inc. (“Plaintiff”), by its undersigned counsel, files this Complaint against Defendant, Four Seasons Pizza, LLC (“Defendant”), for trademark infringement and unfair competition, and in support thereof, states:

INTRODUCTION

1. This is an action for trademark infringement and unfair competition arising from Defendant’s improper use of the FOUR SEASONS PIZZA mark (the “Infringing Mark”). Defendant’s use of the Infringing Mark is likely to cause confusion, and in fact, has caused confusion, among the relevant consuming public, and will continue to cause the Plaintiff significant harm if permitted to continue. This action for damages and injunctive relief is

necessary to compensate the Plaintiff for the harm already caused to it and to prevent any further harm resulting from Defendant's continued use of the Infringing Mark.

PARTIES AND JURISDICTION

2. Plaintiff, Seasons Pizza Franchisor, Inc., is a corporation organized under the laws of the State of Delaware with its principal place of business at 1007 Church Road, Bear Delaware 19702. Plaintiff's affiliates (companies with certain common ownership) and independent franchisees under license from Plaintiff operate 28 restaurants that trade under the SEASONS PIZZA mark in New Jersey, Maryland, Delaware, and Pennsylvania, including eight restaurants throughout Delaware.

3. Defendant, Four Seasons Pizza LLC, is a Delaware corporation with its principal place of business at 2467 S. State Street, Dover, DE 19901-6304. Defendant operates a restaurant business under the Infringing Mark.

4. This Court has subject matter jurisdiction under 15 U.S.C. §1121 and 28 U.S.C. §§1331, 1338 and 1367 as this action involves a trademark dispute arising under the Federal Trademark Statute, a/k/a the Lanham Act (15 USC §§ 1051 *et. seq.*) and related common law claims.

5. Venue is proper under 28 U.S.C. §1391.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

6. Plaintiff, established in 1990, provides restaurant services featuring eat-in, take-out and delivery of pizza, strombolis, calzones, pasta, salads, and sandwiches, such as submarines, burgers and paninis, throughout the mid-Atlantic region of the United States, including New Jersey, Maryland, Pennsylvania, and Delaware. Plaintiff's restaurants are well known for high quality food and service.

7. Since at least November 15, 1990, Plaintiff has been using the SEASONS PIZZA mark in interstate commerce in association with its restaurant services. The SEASONS PIZZA mark has become synonymous with the consistent and high quality food and service offered at all of Plaintiff's locations.

8. On or about March 18, 2003, Plaintiff filed an application with the United States Patent and Trademark Office (USPTO) for registration of the SEASONS PIZZA mark in international class 43. This application identified a date of first use of the SEASONS PIZZA mark in interstate commerce as November 15, 1990.

9. The USPTO registered the SEASONS PIZZA mark on its Principal Register on March 27, 2007. A copy of Registration Certificate No. 3,221,231 is attached as *Exhibit A*.

10. A declaration of use under 15 U.S.C. §1058 and incontestability under 15 U.S.C. §1065 was filed on September 13, 2013, and accepted by the USPTO on September 22, 2013. Thus, the registration is currently in force and incontestable.

11. On or about November 26, 2013, Plaintiff filed an application with the USPTO for registration of the S SEASONS PIZZA PASTA WINGS and design mark in international class 43. This application identified a date of first use of the SEASONS PIZZA PASTA WINGS and design mark in interstate commerce as April 1, 2013.

12. The USPTO registered the S SEASONS PIZZA PASTA WINGS mark on its Principal Register on August 5, 2014. A copy of Registration Certificate No. 4,579,244 is attached as *Exhibit B*.

13. On or about December 2, 2009, Defendant was incorporated in Delaware. See Four Season Pizza LLC Certificate of Incorporation, attached as *Exhibit C*.

14. Defendant operates a restaurant in Dover, Delaware under the mark Infringing Mark offering food and services similar to that of the Plaintiff including pizza, subs, sandwiches, salads and pastas to be eaten in the restaurant, picked up or delivered. A photograph of the exterior of Defendant's restaurant, attached as *Exhibit D*, shows that the terms SEASONS PIZZA is emphasized in the restaurant's exterior signage.

15. Plaintiff advertises its Dover, DE restaurant at <http://4seasonspizza.com> (the "Web Site"); a printout of which is attached hereto as *Exhibit E*.

COUNT I – TRADEMARK INFRINGEMENT
(15 USC §§ 1117 and 1125)

16. Plaintiff repeats and re-alleges paragraphs 1 through 15 as if fully set forth herein.

17. Plaintiff is the senior user of the SEASONS PIZZA mark and thus owns all rights in such mark.

18. By virtue of its federal registration for the SEASONS PIZZA mark, Plaintiff owns certain additional trademark rights under the Lanham Act.

19. Defendant's use of the Infringing Mark and Web Site in connection with its restaurant business is likely to cause confusion, and in fact, has caused confusion, among consumers and vendors about the ownership, sponsorship or approval of Defendant's restaurant in violation of the Lanham Act. In this regard, Plaintiff has received phone calls from customers and/or potential customers asking about its restaurant in Dover, DE. On each occasion, Plaintiff's representative has explained to the person making the inquiry that the Dover restaurant is not operated by, affiliated with, or sponsored by the Plaintiff.

20. Defendant has infringed, and continues to infringe, the SEASONS PIZZA mark.

21. Upon information and belief, Defendant's infringement is willful. In this regard, on August 28, 2017, counsel for Plaintiff sent a letter to Defendant notifying it of Plaintiff's

registration and use of the SEASONS PIZZA mark in connection with its restaurant services. Despite this notice, Defendant continues to use the Infringing Mark to provide restaurant services.

22. Plaintiff has suffered, and continues to suffer, damages and irreparable harm as a result of Defendant's infringement.

23. Unless enjoined by this Court, Defendant will continue the above referenced acts of trademark infringement, thereby causing Plaintiff to suffer additional damages and irreparable injury for which it has no adequate remedy of law.

***COUNT II – TRADEMARK INFRINGEMENT
(Common Law)***

24. Plaintiff repeats and re-alleges paragraphs 1 through 23 as if fully set forth herein.

25. Plaintiff began using the SEASONS PIZZA mark in 1990, and thus, is the senior user of the SEASONS PIZZA mark and owns all rights in such mark under common law.

26. Defendant's use of the Infringing Mark and Web Site in connection with its restaurant business is likely to cause confusion, and in fact, has caused confusion as set forth above, among consumers and vendors about the ownership, sponsorship or approval of Defendant's restaurant in violation of the common law.

27. Defendant has infringed, and continues to infringe, the SEASONS PIZZA mark.

28. Upon information and belief, Defendant's infringement is willful.

29. Plaintiff has suffered, and continues to suffer, damages and irreparable harm as a result of Defendant's infringement.

30. Unless enjoined by this Court, Defendant will continue the above referenced acts of trademark infringement, thereby causing Plaintiff to suffer additional damages and irreparable injury for which it has no adequate remedy of law.

COUNT III – COMMON LAW UNFAIR COMPETITION

31. Plaintiff repeats and re-alleges paragraphs 1 through 30 as if fully set forth herein.

32. Plaintiff is the senior user of the SEASONS PIZZA mark and thus owns all rights in that mark under common law.

33. Defendant is unfairly competing with Plaintiff by using the Infringing Mark and Web Site in connection with its business activities in an effort to benefit from Plaintiff's goodwill and stellar reputation.

34. Plaintiff has suffered, and continues to suffer, damages and irreparable harm as a result of Defendant's unfair competition.

35. Unless enjoined by this Court, Defendant will continue the above referenced acts of unfair competition, thereby causing Plaintiff to suffer additional damages and irreparable injury for which it has no adequate remedy of law.

REQUEST FOR RELIEF

WHEREFORE, Seasons Pizza Franchisor, Inc. respectfully requests that this Court:

1. Enter judgment in its favor on all counts;
2. Find that Four Seasons Pizza LLC conduct has been willful;
3. Award damages to fully compensate it for the damages it suffered as a result of the above referenced acts, which total more than Seventy-Five Thousand Dollars (\$75,000), as well as enhanced damages for willful misconduct;
4. Award attorneys' fees and costs;
5. Enjoin Four Seasons Pizza LLC, as well as its agents, officers, directors, employees, successors, representatives and assigns, and all others acting in concert with them, from using the Infringing Marks and Web Site, as well as any other mark or other commercial

designation which is confusingly similar to the SEASONS PIZZA mark, and from otherwise infringing the distinctive quality of the SEASONS PIZZA mark; and

6. Such other relief as this Court deems just and proper.

REQUEST FOR JURY TRIAL

Seasons Pizza Franchisor, Inc. respectfully requests that this matter be tried before a jury.

Respectfully submitted,

WHITEFORD, TAYLOR & PRESTON LLC

/s/ Kaan Ekiner

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Dated: November 21, 2017

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